

House Study Bill 95 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON BAUDLER)

A BILL FOR

1 An Act relating to operating-while-intoxicated offenses and
2 providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 321J.2, subsection 2, Code 2011, is
2 amended to read as follows:

3 2. A person who violates subsection 1 commits:

4 a. A serious misdemeanor for the first offense.

5 b. An aggravated misdemeanor for a second offense.

6 c. A class "D" felony for a third offense ~~and each~~
7 ~~subsequent offense.~~

8 d. A class "C" felony for a fourth offense and each
9 subsequent offense.

10 Sec. 2. Section 321J.2, Code 2011, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 5A. A fourth offense and each subsequent
13 offense is punishable by all of the following:

14 a. Commitment to the custody of the director of the
15 department of corrections for an indeterminate term not to
16 exceed ten years.

17 b. Assessment of a minimum fine of five thousand six hundred
18 seventy-five dollars and a maximum fine of twelve thousand
19 five hundred dollars. Surcharges and fees shall be assessed
20 pursuant to chapter 911.

21 c. Revocation of the person's driver's license for a period
22 of six years pursuant to section 321J.4, subsection 4.

23 d. Assignment to substance abuse evaluation and treatment, a
24 course for drinking drivers, and, if available and appropriate,
25 a reality education substance abuse program pursuant to section
26 321J.24.

27 Sec. 3. Section 321J.3, subsection 1, paragraph a, Code
28 2011, is amended to read as follows:

29 a. In addition to orders issued pursuant to section 321J.2,
30 subsections 3, 4, ~~and 5~~, and 5A, and section 321J.17, the court
31 shall order any defendant convicted under section 321J.2 to
32 follow the recommendations proposed in the substance abuse
33 evaluation for appropriate substance abuse treatment for the
34 defendant. Court-ordered substance abuse treatment is subject
35 to the periodic reporting requirements of section 125.86.

1 Sec. 4. Section 321J.4B, Code 2011, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 6A. Upon conviction of the defendant for a
4 third or subsequent violation of section 321J.2 or 321J.2A, the
5 court shall order, if the convicted person is the owner of the
6 motor vehicle used in the commission of the offense, that the
7 motor vehicle be seized and forfeited to the state pursuant to
8 chapters 809 and 809A.

9 Sec. 5. Section 321J.5, Code 2011, is amended to read as
10 follows:

11 **321J.5 Preliminary screening test.**

12 1. When a peace officer has reasonable grounds to believe
13 that either of the following have occurred, the peace
14 officer may request that the operator provide a sample of the
15 operator's breath for a preliminary screening test using a
16 device approved by the commissioner of public safety for that
17 purpose:

18 a. A motor vehicle operator may be violating or has violated
19 section 321J.2 or 321J.2A.

20 b. The operator has been involved in a motor vehicle
21 collision resulting in injury or death.

22 2. a. The results of this preliminary screening test may be
23 used for the purpose of deciding whether an arrest should be
24 made or whether to request a chemical test authorized in this
25 chapter, ~~but shall not be used in any court action except to~~
26 ~~prove that a chemical test was properly requested of a person~~
27 ~~pursuant to this chapter.~~

28 b. If a person refuses to submit to a chemical test,
29 evidence of the results, if available, of the person's
30 preliminary screening test conducted pursuant to this section
31 is admissible in any civil or criminal action or proceeding
32 arising out of acts alleged to have been committed while the
33 person was operating a motor vehicle in violation of section
34 321J.2 or 321J.2A.

35 Sec. 6. Section 321J.10A, Code 2011, is amended to read as

1 follows:

2 **321J.10A Blood, breath, or urine specimen withdrawal without**
3 **a warrant — misdemeanor.**

4 1. Notwithstanding section 321J.10, if a person is under
5 arrest for an offense arising out of acts alleged to have been
6 committed while the person was operating a motor vehicle in
7 violation of section 321J.2, subsection 2, paragraph "a" or "b"
8 or section 321J.2A, and that arrest results from an accident
9 that causes a death or personal injury reasonably likely to
10 cause death, a chemical test of blood may be administered
11 without the consent of the person arrested to determine the
12 amount of alcohol or a controlled substance in that person's
13 blood if all of the following circumstances exist:

14 a. The peace officer reasonably believes the blood drawn
15 will produce evidence of intoxication.

16 b. The method used to take the blood sample is reasonable
17 and performed in a reasonable manner by medical personnel under
18 section 321J.11.

19 c. The peace officer reasonably believes the officer is
20 confronted with an emergency situation in which the delay
21 necessary to obtain a warrant under section 321J.10 threatens
22 the destruction of the evidence.

23 2. If the person from whom a specimen of blood is to be
24 withdrawn objects to the withdrawal, a breath or urine sample
25 may be taken under the following circumstances:

26 a. If the person is capable of giving a specimen of breath,
27 and a direct breath testing instrument is readily available,
28 the withdrawal of a specimen of the person's breath may be
29 taken for chemical testing, unless the peace officer has
30 reasonable grounds to believe that the person was under the
31 influence of a controlled substance, a drug other than alcohol,
32 or a combination of alcohol and another drug.

33 b. If the peace officer has reasonable grounds to believe
34 that the person was under the influence of a controlled
35 substance, a drug other than alcohol, or a combination of

1 alcohol and another drug, a urine sample shall be collected in
2 lieu of a blood sample, if the person is capable of giving a
3 urine sample and the sample can be collected.

4 Sec. 7. NEW SECTION. 321J.10B Blood, breath, or urine
5 **specimen withdrawal without a warrant — felony.**

6 1. Notwithstanding section 321J.10, if a person is under
7 arrest for an offense arising out of acts alleged to have
8 been committed while the person was operating a motor vehicle
9 in violation of section 321J.2, subsection 2, paragraph "c"
10 or "d", a chemical test of blood may be administered without
11 the consent of the person arrested to determine the amount of
12 alcohol or a controlled substance in that person's blood if all
13 of the following circumstances exist:

14 a. The peace officer reasonably believes the blood drawn
15 will produce evidence of intoxication.

16 b. The method used to take the blood sample is reasonable
17 and performed in a reasonable manner by medical personnel under
18 section 321J.11.

19 c. The peace officer reasonably believes the officer is
20 confronted with an emergency situation in which the delay
21 necessary to obtain a warrant under section 321J.10 threatens
22 the destruction of the evidence.

23 2. If the person from whom a specimen of blood is to be
24 withdrawn objects to the withdrawal, a breath or urine sample
25 may be taken under the following circumstances:

26 a. If the person is capable of giving a specimen of breath,
27 and a direct breath testing instrument is readily available,
28 the withdrawal of a specimen of the person's breath may be
29 taken for chemical testing, unless the peace officer has
30 reasonable grounds to believe that the person was under the
31 influence of a controlled substance, a drug other than alcohol,
32 or a combination of alcohol and another drug.

33 b. If the peace officer has reasonable grounds to believe
34 that the person was under the influence of a controlled
35 substance, a drug other than alcohol, or a combination of

1 alcohol and another drug, a urine sample shall be collected in
2 lieu of a blood sample, if the person is capable of giving a
3 urine sample and the sample can be collected.

4 Sec. 8. Section 707.6A, subsection 6, Code 2011, is amended
5 to read as follows:

6 6. Except for the purpose of sentencing under section
7 321J.2, subsections 3, 4, and 5, and 5A, a conviction or
8 deferral of judgment for a violation of this section, where a
9 violation of section 321J.2 is admitted or proved, shall be
10 treated as a conviction or deferral of judgment for a violation
11 of section 321J.2 for the purposes of chapters 321, 321A, and
12 321J, and section 907.3, subsection 1.

13 Sec. 9. Section 907.3, subsection 3, paragraph c,
14 unnumbered paragraph 1, Code 2011, is amended to read as
15 follows:

16 A mandatory minimum sentence of incarceration imposed
17 pursuant to a violation of section 321J.2, subsection 1;
18 furthermore, the court shall not suspend any part of a sentence
19 not involving incarceration imposed pursuant to section 321J.2,
20 subsection 3, 4, ~~or 5~~, or 5A, beyond the mandatory minimum if
21 any of the following apply:

22 EXPLANATION

23 This bill creates a new class "C" felony for a fourth
24 or subsequent operating-while-intoxicated (OWI) criminal
25 offense in violation of Code chapter 321J (Iowa's
26 operating-while-intoxicated law), punishable by confinement
27 for no more than 10 years and a fine of between \$5,675 and
28 \$12,500, revocation of the person's driver's license for a
29 six-year period, a substance abuse evaluation and treatment, a
30 course for drinking drivers, and, if available and appropriate,
31 a reality education substance abuse program. The bill makes
32 conforming changes to Code sections 321J.3 (rules relating to
33 substance abuse evaluation or treatment), 707.6A (homicide or
34 serious injury by vehicle), and 907.3 (provisions relating to
35 deferred judgments, deferred sentences, or suspended sentences

1 in OWI cases).

2 The bill provides that if a person is convicted of a third
3 or subsequent violation of Code chapter 321J.2 or 321J.2A
4 (offenders under 21 years of age), the court shall order, if
5 the convicted person is the owner of the motor vehicle used in
6 the commission of the offense, that the motor vehicle be seized
7 and forfeited to the state pursuant to Code chapters 809 and
8 809A.

9 Current law provides that if a person is under arrest
10 for an OWI offense (misdemeanor or felony) and that arrest
11 results from an accident that causes a death or personal injury
12 reasonably likely to cause death, a chemical test of blood
13 may be taken without the consent of the person arrested to
14 determine the amount of alcohol or a controlled substance in
15 that person's blood if the peace officer reasonably believes
16 the blood drawn will produce evidence of intoxication,
17 the method used to take the blood sample is reasonable and
18 performed pursuant to Code section 321J.11, and the peace
19 officer reasonably believes the officer is confronted with an
20 emergency situation. The bill makes this provision applicable
21 to first and second OWI offenses (misdemeanors) and creates
22 a similar provision allowing the involuntary withdrawal of a
23 blood, breath, or urine specimen from a person under arrest
24 for a felony-level OWI offense under similar circumstances;
25 however, this new provision does not require that an accident
26 causing death or personal injury reasonably likely to cause a
27 death occur.